

## CHAPTER Env-C 600 ADMINISTRATIVE FINES

Statutory Authority: RSA 125-C:15, I-b; RSA 125-D:4; RSA 125-I:3-a; RSA 125-J:8, I-a; RSA 141-E:16; RSA 146-A:15, I; RSA 146-C:10-a; RSA 147-A:17-a, I; RSA 149-M:16; RSA 149-M:37, IV; RSA 482:79-a, I; RSA 482:89, II; RSA 482-A:13; RSA 482-B:16, II; RSA 483-B:17, V; RSA 485:58, IV; RSA 485-A:22, V; RSA 485-A:28, II; RSA 485-A:43, V; RSA 485-A:54, V; RSA 485-C:18; and RSA 487:7, II; ***RSA 488:9, VI***

## PART Env-C 601 ADMINISTRATIVE FINE PROCEDURES

*Readopt with amendment Env-C 601.01, eff. 12-3-98 (doc. #6899), to read as follows:*

Env-C 601.01 Purpose. The purpose of this part is to set forth the procedures that will be followed when the department of environmental services seeks to impose an administrative fine.

*Readopt with amendment Env-C 601.02, eff. 12-3-98 (doc. #6899), as amended eff. 5-25-00 (doc. #7297), to read as follows:*

### Env-C 601.02 Definitions.

(a) “Division” means a division, as defined in RSA 21-G:5, VII, within the department that has primary responsibility for administering a statute under which the commissioner has authority to impose administrative fines, such as the air resources division, the waste management division, or the water division.

(b) “Calculated fine” means the dollar amount of an administrative penalty determined in accordance with Env-C 610 or RSA 125-C:15, I-b(b), as applicable to a particular violation.

(c) “Commissioner” means the commissioner of the department.

(d) “Department” means the department of environmental services.

(e) “Inspector” means staff of the department who inspects a facility and issues a field citation in accordance with Env-C 601.12.

(f) “Person” means, for each administrative fine imposed, “person” as defined by the statute which authorizes the imposition of the administrative fine.

(g) “Respondent” means the person against whom a fine is sought to be imposed.

(h) “Scheduled fine” means the dollar amount of an administrative penalty specified in Env-C 602 through Env-C 609 or Env-C 611 through Env-C 616, as applicable to a particular violation.

*Readopt with amendment Env-C 601.03 through Env-C 601.09, eff. 12-3-98 (doc. #6899), and renumber as Env-C 601.03 through Env-C 601.11, to read as follows:*

### Env-C 601.03 Calculation of Proposed Fines.

(a) The total fine proposed by the division shall be the sum of the scheduled fine(s) or calculated fine(s) for each violation for which a fine is sought.

(b) In any case of a continuing violation, each day during which such violation occurs shall be considered to be a separate offense.

Env-C 601.04 Notice of Proposed Fine: Contents. To initiate an administrative fine proceeding, the division shall notify the respondent in writing of the following:

- (a) The violation(s) alleged by the division and the facts on which the allegations are based;
- (b) The statute that authorizes the commissioner to impose a fine;
- (c) The statutory section(s) or rule(s) that specify the amount of the fine and the amount of the fine specified therein;
- (d) The total amount of fine(s) being sought;
- (e) That the respondent has a right to a hearing prior to the imposition of the fine; and
- (f) That the respondent is required by Env-C 601.06 to respond to the notice by the date specified in the notice.

Env-C 601.05 Notice of Proposed Fine: Delivery. The notice required by Env-C 601.05 shall be delivered by one of the following methods:

- (a) For fines sought pursuant to Env-C 608 “Field Citation Fines”, by delivery in hand of a field citation as described in Env-C 601.14 to the respondent or, if the respondent is not at the facility when the field citation is written, to the respondent’s representative; or
- (b) For all other fines, by:
  - (1) Mailing the notice certified mail, return receipt requested, to the respondent; or
  - (2) Delivering the notice in hand to the respondent or, if the respondent is not available, to the respondent’s representative.

Env-C 601.06 Required Response to Notice of Proposed Fine.

- (a) After receiving a notice of proposed fine, the respondent shall respond to the notice by either:
  - (1) Indicating that the respondent will attend a hearing; or
  - (2) Waiving the hearing and paying the proposed fine.

(b) The respondent shall file the response by the date specified in the notice, which shall be no sooner than 25 days from the date of the notice.

(c) For notices issued pursuant to Env-C 601.14, the date specified in the notice as the deadline for response shall be 25 days from the date of the citation.

(d) Any respondent who does not waive the hearing shall inform the department of any change in the respondent's mailing address that occurs prior to the final resolution of the matter.

Env-C 601.07 Notice of Hearings. Notice of a hearing held to determine whether to impose an administrative fine shall be given in accordance with RSA 541-A:31 and the provisions of Env-C 200 that apply to notice of adjudicative proceedings.

Env-C 601.08 Conduct of Hearings. Administrative fine hearings shall be held in accordance with ~~RSA 541-A:31 and~~ the provisions of ***RSA 541-A*** and Env-C 200 that apply to the conduct of adjudicative proceedings.

Env-C 601.09 Determination of Total Fine Due Following a Hearing. If a hearing is held on a proposed fine, the fine shall be determined in accordance with the following:

(a) If the division does not prove by a preponderance of the evidence that the violation for which a fine is sought occurred, the commissioner shall impose no fine for that specific violation; and

(b) Subject to Env-C 601.10 and Env-C 601.11, if the division proves by a preponderance of the evidence that the violation for which a fine is sought occurred, the commissioner shall impose the appropriate fine for that specific violation, with reference to the applicable scheduled fine or calculated fine.

Env-C 601.10 Reduction in Fine Imposed Following Hearing. The amount of fine imposed for a specific violation shall be reduced by 10% for each of the following that apply to that specific violation:

(a) In the case of a non-continuing or one-time offense, where all of the following are true:

(1) The respondent proves, by a preponderance of the evidence, his/her ignorance, as of the time of the violation, of the statute(s), rule(s), or permit(s) which were violated;

(2) The violation has not continued or recurred as of the time of the hearing;

(3) Any environmental threat or harm caused by the offense has been alleviated; and

(4) The respondent did not derive any direct or indirect economic benefit from the

offense;

(b) The respondent proves, by a preponderance of the evidence, that s/he made a good faith effort to comply with the statute(s), rule(s), or permit(s) involved and that the violation occurred despite those efforts;

(c) The respondent proves, by a preponderance of the evidence, that s/he has no history of non-compliance with the statute(s), rule(s), or permit(s) of the department; or

(d) The respondent proves, by a preponderance of the evidence, information favorable to his/her case which was not known to the division at the time the fine was proposed.

Env-C 601.11 Increase in Fine Imposed Following Hearing.

(a) Subject to (b), below, the amount of fine imposed for a specific violation shall be increased by 10% for each of the following that apply to that specific violation:

(1) The division proves, by a preponderance of the evidence, that the respondent was aware of the requirements applicable to the activity~~/(ies)~~ ~~which~~***that*** formed the basis for the division's allegations as of the time of the violation;

(2) The division proves, by a preponderance of the evidence, that any environmental threat or harm caused by the offense has not been alleviated as of the date of the hearing;

(3) The division proves, by a preponderance of the evidence, that the respondent derived some direct or indirect economic benefit from the offense;

(4) The division proves, by a preponderance of the evidence, that the respondent did not act in good faith to remedy the violation(s) for which the fine is sought;

(5) The division proves, by a preponderance of the evidence, that the respondent has a history of non-compliance with the statute(s), rule(s), or permit(s) of the department; or

(6) The division proves, by a preponderance of the evidence, other factors, not specifically identified above, that cause the violation to be more serious, for instance because a large area of land was impacted by the violation or an ecosystem was destroyed by the violation.

(b) The fine(s) shall not be increased beyond the maximum fine stated in the statute under which the division is seeking the fine(s).

*Readopt with amendment Env-C 601.10, eff. 5-25-00 (doc. #7297), and renumber as Env-C 601.12, to read as follows:*

Env-C 601.12 Notice of Decision.

(a) Subject to (d), below, after the close of the record the commissioner shall issue a written decision stating the final determination on the proposed administrative fine.

(b) In the decision, the commissioner shall state the findings of fact and rulings of law upon which the determination is based.

(c) The commissioner shall send the decision by first class mail to the respondent and shall give a copy of the decision to the division that proposed the fine.

(d) If a hearing is held pursuant to the provisions of Env-C 200 that allow a hearing to be held in the respondent's absence if notice has been given as required, the commissioner shall not render a decision prior to the expiration of the time period allowed by those rules for the respondent to request the hearing to be reconvened.

*Readopt with amendment Env-C 601.11 and Env-C 601.12, eff. 12-3-98 (doc. #6899), as amended eff. 5-25-00 (doc. #7297), and renumber as Env-C 601.13 and Env-C 601.14, to read as follows:*

Env-C 601.13 Payment of Fines.

(a) If the respondent waives the right to a hearing, the respondent shall pay the fine:

(1) By the date specified in the notice, which shall not be less than 25 days from the date of the notice of the proposed fine; or

(2) If the case is settled, in accordance with the settlement agreement signed by the respondent, the division, and the commissioner.

(b) In all other cases where a fine is imposed, the respondent shall pay the fine within 30 days of the date of the commissioner's decision, or such longer time period as is specified in the decision.

(c) Payment shall be sent to the commissioner or such other person as is identified in the notice, decision, or settlement agreement, as applicable. Payment made by check or money order shall be made payable to "Treasurer, State of New Hampshire".

Env-C 601.14 Field Citations.

(a) A field citation issued in accordance with this section shall constitute a notice of proposed fine.

(b) The citation form shall be a multi-part carbonless form that contains the following:

(1) A place for the inspector to write in the name, address, and telephone number of the respondent, including the name and title of an upper management contact individual for non-natural persons, if known;

- (2) A place for the inspector to write in the date and time that the citation is prepared and issued;
  - (3) Identification of the section(s) of the statute(s), rule(s), or permit(s) for which there is a scheduled fine, together with a brief description of the violation(s);
  - (4) Identification of the statutory section that authorizes the commissioner to impose a fine;
  - (5) Identification of the statutory section(s) or rule(s) that specify the amount of the fine and the amount of the fine specified therein;
  - (6) A place for the inspector to write in the total amount of fine(s) sought on the citation;
  - (7) A place for the inspector to write in the name, telephone number, and signature of the inspector issuing the citation;
  - (8) A place for the signature of the individual who receives the citation on behalf of the respondent, and for the printed name of the individual if different from the name identified in (1) above;
  - (9) The name, address, and telephone number of the division issuing the citation;
  - (10) A statement that, pursuant to Env-C 601.06, the respondent is required to respond to the citation within 25 days of the date of the citation;
  - (11) A statement that the respondent has the right to a hearing; and
  - (12) The name and address of the person to whom the respondent shall respond.
- (c) At the time of the issuance of the citation, the inspector shall:
- (1) Write in the name, address, and telephone number of the respondent, including the name and title of an upper management contact individual for non-natural persons, if known;
  - (2) Write in the date and time that the citation is prepared and issued;
  - (3) Identify the specific section(s) of the statute(s), rule(s), or permit(s) for which a fine is being sought;
  - (4) Write in the total amount of fine(s) sought on the citation;
  - (5) Write in the name and telephone number of the inspector issuing the citation;
  - (6) Sign the citation; and

- (7) Present the citation to the respondent or, if the respondent is unavailable, to the respondent's representative for signature.
- (d) The respondent or, if the respondent is unavailable, the respondent's representative shall:
- (1) Sign the citation;
  - (2) Keep a copy of the signed citation; and
  - (3) Return the original and any remaining copies of the signed citation to the inspector.

## APPENDIX

Rule Section(s)	State Statutes Implemented
Env-C 601	RSA 125-C:15, I-b; RSA 125-D:4; RSA 125-I:3-a; RSA 125-J:8, I-a; RSA 141-E:16; RSA 146-A:15, I; RSA 146-C:10-a; RSA 147-A:17-a, I; RSA 149-M:16; RSA 149-M:37, IV; RSA 482:79-a, I; RSA 482:89, II; RSA 482-A:13; RSA 482-B:16, II; RSA 483-B:17, V; RSA 485:58, IV; RSA 485-A:22, V; RSA 485-A:28, II; RSA 485-A:43, V; RSA 485-A:54, V; RSA 485-C:18; RSA 487:7, II; <b><i>RSA 488:9, VI</i></b>